

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5442 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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VEDVA VAGRI PUNIBEN DOLABHAI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

#. Heard learned advocate Ms. Subhadra Patel for the petitioner and learned A.G.P. Mr.D.P.Joshi, for the respondent nos.1, 2 and 3.

#. The detention order dtd.4.2.99 passed by the respondent no.2 District Magistrate Bhavnagar in exercise of power conferred under Sec.3 (1) of Gujarat Prevention of Anti-Social Activities Act 1985 ( "PASA" for short )

is challenged in the present proceeding under Article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner under Sec.9 (1) of PASA, copy of which is produced at Annexure B interalia indicate that six cases of prohibition were registered against the petitioner at Palitan Police Station on 5.3.98, 17.4.98, 14.6.98, 29.7.98, 11.10.98 and 11.1.99. That in each case, country made liquor has been seized from the possession of the petitioner and all the cases are pending for trial or investigation. Furthermore, three witnesses on assurance of anonymity have supplied information in respect to the bootlegging activity of the petitioner vide statements dtd.23.12.98. That in consideration of said material, respondent no.2 has come to conclusion that petitioner is a "bootlegger" within the meaning of Sec.2 (b) of PASA. That resort to general provisions of law is not likely to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order and as such detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It is contended that while passing the impugned order the detaining authority has failed to consider the less drastic remedy like claiming or cancellation of bail or opposing the bail. That impugned order appears to have been passed on apprehension rather than material and as such subjective satisfaction having been vitiated the order is invalid.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134 Division Bench of this court has expressed view that non consideration of less drastic remedy like cancellation of bail under Sec.437 (5) of Cr.P.C. amounts non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court ( Coram : C.K.Thakkar & A.L.Dave JJ).

#. On scrutiny of grounds of detention order produced on record, it appears that the detaining authority has observed while forming the ground of detention that petitioner having been released on bail in a case registered against her has continued her anti-social activity of bootlegging and therefore to prevent the petitioner detention order is necessary. However, the

ground does not indicate that detaining authority has considered the aspect of availability of less drastic remedy of claiming cancellation of bail or opposing the bail under Sec.437 (5) of Cr. P.C. On account of the said infirmity subjective satisfaction having been vitiated the order rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contentions raised.

#. On the basis of aforesaid discussion, petition is allowed. The detention order dtd.4.2.99 passed by the respondent no.2 against the petitioner is hereby quashed and set-aside. The petitioner-Veda Vagri Puniben Dolabhai is ordered to be set at liberty forthwith, if she is not required in any other case.

#. Rule to that extent made absolute.

kks.